

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
Rural Call Completion) WC Docket No. 13-39

**COMMENTS OF THE AMERICAN CABLE ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING**

The American Cable Association (“ACA”) submits comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) to address problems in the completion of long-distance telephone calls to customers in rural areas:¹ At the outset of the NPRM, the Commission defines the problem as one where intermediate providers offering wholesale delivery of long-distance calls may be failing to deliver “a significant number of calls to rural telephone company customers” and “retail long-distance providers may not be adequately examining” rural call completion performance.² It therefore proposes to adopt reporting and data retention requirements to assist in ensuring “a reasonable and nondiscriminatory level of service to rural areas.”³ As discussed herein, ACA supports Commission efforts to address rural call completion issues. It submits that the Commission’s “first-best solution” is to fix responsibility with and apply any regulations to carriers that are the primary economic beneficiary of the service and that control long-distance call routing – that is,

¹ See *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, FCC 13-18 (rel. Feb. 7, 2013).

² *Id.*, ¶1.

³ *Id.*, ¶3.

initial facilities-based long-distance (“LD”) providers⁴ – not local service providers which on one end provide a connection for LD providers to reach their long-distance customers and, on the terminating end, for LD providers to reach the called parties.⁵

I. INTRODUCTION AND SUMMARY

ACA represents approximately 850 mid-size and smaller cable operators, most of whom also offer voice and broadband services in local markets throughout the United States.⁶ These members have varying and significant interests in the NPRM. First, many ACA members operate in rural areas, and many are members of rural telecommunications trade associations that have been in the forefront of providing evidence to the Commission about call completion problems and in calling for Commission action to remedy these problems. In the NPRM, the Commission discusses this evidence and concludes that failure to complete calls in rural areas is “serious and widespread” and produces a variety of harms.⁷ ACA concurs. The Commission should address this problem.

⁴ For purposes of these comments, ACA defines LD provider (which includes an interexchange carrier) as the provider that transports (or for an intermediate provider, participates in transporting) a long-distance call from the calling party’s local service provider’s service area to the called party’s local service provider’s service area. The local service provider’s network would include its end office and/or tandem switching. The transmission technology used by an LD or local service provider can be TDM or IP. A local service provider can be a local exchange carrier, a VoIP provider, or commercial mobile radio service provider.

⁵ Incumbent local exchange carriers’ originating and terminating access charge rates are limited by regulation, and the rates charged by competitive local exchange carriers are benchmarked to these rates.

⁶ ACA members provide voice service using TDM or IP technology. For those using IP technology, voice service is generally provided on a managed (non “over-the-top”) basis. While many ACA members own and operate their own local voice facilities, smaller providers may contract with a third-party to provide this service on its behalf. Finally, some ACA members provide voice long-distance service, either using their own facilities or by reselling the services of facilities-based LD providers.

⁷ See NPRM, ¶ 4.

In considering potential solutions, the Commission needs to ensure it minimizes any burden potential rules place on smaller providers – a class that includes almost all ACA members.⁸ Over the past five years, the Commission has imposed a number of new regulatory requirements on them, and, while each alone may not be onerous, the cumulative effect is. ACA urges the Commission to ensure that any new regulations are precisely targeted and minimize burdens on them.

In general, ACA believes that the responsibility for fixing any call completion problem should rest with the initial facilities-based LD provider because that carrier benefits most from provision of the service, controls the call flow (routing and completion) of long-distance calls,⁹ and has direct access to complete information about whether a call is completed. Moreover, the Commission has authority to impose the necessary regulations on these LD providers. In this regard, the Commission recently fixed responsibility on the facilities-based LD provider Level 3 Communications, LLC (“Level 3”) to resolve potential violations of call completion practices to rural areas.¹⁰ Thus, placing regulations on the initial facilities-based LD provider is clearly the first-best solution.

Because the Commission can fully address call completion problems by focusing any new regulations on the initial facilities-based LD provider, it need not and should not impose, as

⁸ The remainder of ACA’s members, as noted earlier, are mid-sized providers.

⁹ See “Intercarrier Call Completion/Call Termination Handbook” (ATIS-0300106), Alliance for Telecommunications Industry Solutions (“ATIS”) at 19 (approved Aug. 2012). (“Interexchange carriers must on their own establish routes between originating offices and [the] terminating local network.”)

¹⁰ See *Level 3 Communications, LLC*, Order, File No. EB-12-IH-0087 (rel. Mar. 12, 2103) and *Level 3 Communications, LLC*, Consent Decree, File No. EB-12-IH-0087 (rel. Mar. 12, 2013).

it proposes in the NPRM, new monitoring, record retention, and reporting requirements on local exchange (voice) providers that are not facilities-based LD providers.¹¹ These providers do not control call routing nor do they directly have access to complete information to track a call to completion. Put simply, imposing monitoring and reporting burdens on them would be an inefficient and less effective solution than placing requirements on the initial facilities-based LD provider.

If the Commission does not take this path and decides to impose requirements on local service providers, at least it should adopt its proposal to exempt providers with 100,000 or fewer retail long-distance subscribers.¹² Finally, if the Commission does not limit its solution to only the initial facilities-based LD provider, for local voice providers with more than 100,000 long-distance subscribers, the Commission should create a safe harbor if they require in their access tariff or via contracts with LDs that the LD provider shall complete calls they originate in compliance with any regulatory requirements.

II. THE COMMISSION SHOULD DIRECT ANY REGULATORY SOLUTION TOWARDS LD PROVIDERS THAT CONTROL LONG-DISTANCE CALL FLOW TO RURAL AREAS AND NOT ORIGINATING LOCAL EXCHANGE (VOICE) PROVIDERS

The Commission on its website provides a brief description of the source of the rural call completion problem:

In a nutshell, the problem appears to be occurring in rural areas where long distance or wireless carriers normally pay higher-than-average charges to the local telephone company to complete calls... To minimize these charges, some long-distance and wireless carriers contract with third-party "least-cost routing" service providers to connect calls to their destination at the lowest cost possible. Although many of these contracts include

¹¹ NPRM, ¶ 13.

¹² *See id.*, ¶ 31.

strictly-defined performance parameters, it appears that all too frequently those performance levels are not being met or, indeed, some calls are not even connecting at all.¹³

ACA agrees with the Commission's description of the call completion problem. At the outset, it is important to understand that an LD provider is the primary beneficiary of the long-distance calls, providing a service for and receiving payment from its subscribers. The LD provider in turn establishes a relationship (via tariff or contract) with a local service provider to originate and terminate the call. In addition, the initial facilities-based LD provider controls long-distance call routing, including by entering into relationships with intermediate carriers that use least-cost routing techniques to complete the call. Accordingly, the initial facilities-based LD provider clearly is the entity responsible for ensuring the successful completion of a call. This conclusion is supported by and reflected in a variety of actions by the Commission and recommendations from the industry, including:

- The Commission's just completed Consent Decree with the LD provider Level 3;
- The Commission's "ongoing investigations of several long-distance providers" regarding call completion issues;¹⁴
- AT&T's call for the establishment of industry best practices for LD providers to manage their call termination suppliers;¹⁵ and
- The subsequent action this past September of the ATIS developing a handbook for "best practices for addressing call termination problems, especially related to management of intermediate and underlying carriers."¹⁶

¹³ *Rural Call Completion: Problems with Long Distance or Wireless Calling to Rural Areas*, FCC Encyclopedia, available at: <http://www.fcc.gov/encyclopedia/problems-long-distance-or-wireless-calling-rural-areas>.

¹⁴ NPRM, ¶ 11.

¹⁵ See Presentation of Penn Pfautz, Director, Product Development, AT&T, FCC Rural Call Completion Workshop at 2 (Oct. 18, 2011) available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310507A1.pdf.

In sum, the Commission can most directly address any call completion concerns by exercising its authority and applying mandates to these LD providers.

In contrast to the primacy of the initial facilities-based LD providers' position in determining long-distance call flow, local service providers play no direct role. They only provide a service to LD providers by originating and terminating long-distance calls, thereby connecting LD providers' subscribers with the called party, and do not control call routing between the local service areas. As such, the local provider has no role in causing call completion problems.

Fixing responsibility with the initial facilities-based LD provider is the most direct and effective solution because these providers can detect call complete problems on their own without needing to gather any additional information about long-distance transmissions from the local service provider. It also is the most efficient. This is perhaps best demonstrated by the fact that where an LD provider uses no intermediate carriers, once it is provided with originating information and the destination from the originating local service provider (which occurs in the normal course of transmission according to Commission requirements and industry standards), it has direct access to all the information required to determine whether a call is completed. In other words, the Commission by only looking to that LD provider and holding them accountable can address any call completion problems without involving any other service provider.¹⁷ In

¹⁶ "ATIS Leads Initiative to Address Call Completion Rates in Rural Areas; Publishes Handbook Containing Best Practices" (Sept. 4, 2012), available at: www.atis.org/PRESS/pressreleases2012/090412.html.

¹⁷ Even when this same LD provider hands off a call to intermediate carriers, the Commission too needs only to fix responsibility on the LD provider since this provider can bind the intermediate carriers to complete the call and pass along information that the

contrast, a local provider has data about its originating traffic, but it can only determine whether a call is completed by receiving data from the LD provider. Thus, imposing requirements on local service providers would be an unnecessarily indirect (i.e. inefficient) solution, burdening two providers where the task could be completed by only imposing regulations on one (the LD provider).

ACA's proposed solution is consistent with the Commission's rules that seek to ensure payphone service providers are properly compensated. In adopting these rules, the Commission determined that facilities-based LD providers were the primary economic beneficiary and were in the best position to track calls.¹⁸ The Commission's adopted rules require a "Completing Carrier" (a long-distance carrier or switch-based long-distance reseller) to "establish a call tracking system that accurately tracks...calls to completion."¹⁹ The rules also require Completing Carriers to file detailed quarterly reports and provide for independent third party audits.²⁰

III. SHOULD THE COMMISSION IMPOSE REGULATIONS ON LOCAL SERVICE PROVIDERS, THE PROPOSED 100,000 SUBSCRIBER EXEMPTION IS WARRANTED

The Commission proposes to exclude small providers – those with fewer than 100,000 retail long-distance subscribers – from monitoring and reporting on call attempts. To the extent

call has been completed. In contrast, local service providers are in no position to directly bind intermediate carriers.

¹⁸ See e.g., *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235, ¶ 27 (Oct. 3, 2003).

¹⁹ 47 CFR §§ 64.1300(a), 64.1310(a)(1).

²⁰ See 47 CFR §§ 64.1310(a)(4), 64.1320.

that the Commission intends to fix responsibility on local service providers, ACA supports this proposal.²¹ As indicated above, the Commission has imposed numerous requirements on smaller providers recently, which when taken in aggregate amounts to a significant burden. The Commission should not add to that burden unless it finds that any additional regulations are essential to addressing a substantial problem. In the particular case of call completion, ACA submits that the Commission can achieve its objectives without imposing new requirements on small local providers and instead focusing on the major local providers.

The fact is that the large local providers – wireline or wireless – have most voice subscribers, and wireless providers have most of these. As of year-end 2011, of the 442 million retail local telephone service connections, wireless had twice the number of wireline and the disparity was growing.²² As for the 143 million wireline connections,²³ a small group of carriers at the top (incumbent or competitor) have that vast number of subscribers. In the cable sector, there are 28 million subscriptions, and 90 percent of these are with Comcast, Time Warner Cable, and other top ten multiple system operators.²⁴ These local providers alone could ferret

²¹ See NPRM, ¶ 31.

²² See “Local Telephone Competition: Status as of December 31, 2011,” Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, at 1 (Jan. 2013).

²³ See *id.* at 2.

²⁴ For instance, Comcast has approximately 10 million (<http://www.telecompetitor.com/comcast-continues-to-add-voice-customers-despite-wireless-only-trend/>), Time Warner Cable 5 million (<http://www.zacks.com/stock/news/97873/earnings-beat-for-time-warner-cable>), Cox and Brighthouse 3 million (<http://apps.fcc.gov/ecfs/document/view?id=7021862357>), Cablevision 2.5 million (<http://www.cablevision.com/pdf/news/022813.pdf>), and Charter 2 million (see “Charter Communications Inc.,” UBS Investment Research, at 3 (May 8, 2013)).

out the LD providers that are causing call completion problems. Thus, ACA's cable provider members with 100,000 or fewer subscriptions comprise about 0.5 percent of the total connections – hence they are too few to uncover and address any call completion problems, justifying the Commission's proposed exemption.

Not only would imposing requirements on ACA's members have little effect on addressing call completion concerns, the Commission's proposed monitoring and reporting requirements²⁵ would be onerous for ACA members. One ACA member with approximately 20,000 voice subscribers indicated it would (1) take approximately 1,000 person-hours to establish the process to meet the proposed record keeping requirements,²⁶ (2) require the installation and use of additional equipment to increase its current 14-day call record storage capacity to meet the six month retention requirement,²⁷ and (3) take over 100 person-hours each month to analyze, audit, and report on the data.²⁸ That translates into an upfront cost of approximately \$50,000 and a similar annual ongoing cost. This is clearly excessive in absolute terms for smaller entities and in terms of the value of the information produced for this cost. As such, it would be contrary to the Paperwork Reduction Act's direction that the Commission minimize the paperwork burden on small businesses.²⁹ For these reasons, if the Commission intends that local providers are to be responsible for monitoring and reporting on rural call

²⁵ See NPRM, ¶¶ 20-30.

²⁶ See *id.*, ¶ 22.

²⁷ See *id.*

²⁸ See *id.*, ¶¶ 20-21.

²⁹ See 44 U.S.C. §§ 3501(1), 3506(c)(3)(C).

completion, ACA urges the Commission to adopt the proposed exemption for local providers with 100,000 or fewer subscribers.

IV. SHOULD THE COMMISSION IMPOSE REGULATIONS ON LOCAL SERVICE PROVIDERS, IT SHOULD CREATE A SAFE HARBOR FOR LOCAL PROVIDERS WITH MORE THAN 100,000 SUBSCRIBERS PERMITTING THEM THROUGH ACCESS TARIFFS OR CONTRACTS WITH FACILITIES-BASED LD PROVIDERS TO ESTABLISH CALL COMPLETION REQUIREMENTS

The Commission proposes two safe harbors, one focusing on managing intermediate providers and the other on monitoring performance. ACA believes the Commission should, assuming it imposes regulations on local service providers with more than 100,000 subscriptions, adopt another safe harbor enabling any local service provider to avoid the monitoring and reporting requirements by including in its agreements with LD providers (or its tariffs where permissible) a provision stating that the LD provider has an obligation to complete calls in compliance with Commission regulations on that matter and produce documentation when requested to verify that it has done so. As discussed above, the initial facilities-based LD provider is the primary beneficiary of the long-distance calls, controls the routing, and has direct access to the key data. By having the local service provider bind that LD provider, ACA submits the Commission will achieve its call completion objectives effectively and efficiently – and warrant a safe harbor.

Respectfully submitted,



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